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IN THE

Supreme Court of the United States

October Term, 1942

Nos. 480-487

ROBERT MURDOCK, JR., ANNA PERISICH,
WILLARD L. MOWDER, CHARLES SEDERS,
ROBERT LAMBORN, ANTHONY MALTEZOS,
~~ANASTASIA TZANES, and ELAINE TZANES,~~

Petitioners

VS.

COMMONWEALTH OF PENNSYLVANIA
(City of Jeannette)

Respondent

On Certiorari to the Superior Court of Pennsylvania

RESPONDENT'S BRIEF

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Counter-Statement of the Case

COUNTER STATEMENT OF THE CASE

The distorted version of the facts set forth in petitioners' brief, and upon which the petitioners ask this Court to decide the case, cannot be permitted to go unchallenged.

The only brief served on the respondent at the date this reply is being prepared is a typed one. It is assumed that the page numbers in the printed brief ultimately presented to this Court will correspond with the page numbers in the typed brief. Page references in this reply must necessarily apply to the typed brief.

Footnote 1 on page 2 of petitioners' brief attempts to assert that the petitioners were "prosecuted for peddling and huckstering without payment of the \$10.00 daily license" under Section II of the ordinance. If there is any doubt on this point, it will be cleared up by the verbatim quotation from the information upon which the petitioners were arrested and convicted, which is printed on page 4 of the petitioners' brief. It shows they were prosecuted for a violation of Section I of the ordinance, which provides for a license fee of \$1.50 per day, \$7.00 per week, or \$12.00 for two weeks.

The petitioners would prefer to have their activities described by Mr. Charles R. Hessler, "Supervising Minister for Jehovah's Witnesses in the Pittsburgh area", rather than by the Commonwealth's witnesses. Mr. Hessler was not a witness in any of these cases. Only four of the eight defendants charged with the violation of the city ordinance offered themselves as witnesses. These four did not materially contradict the testimony offered on behalf of the Commonwealth.

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Charles R. Hessler did appear as a witness before the District Court of the United States for the Western District of Pennsylvania in the injunction proceeding, which is before this Court in *Douglas v. City of Jeannette and John M. O'Connell, Mayor*, at No. 450 October Term, 1942. Reference is made by the petitioners to his testimony in that case.² Respondent's brief in that action will deal more fully with Mr. Hessler's testimony. It is sufficient to say here that a more evasive and more vacillating witness would be difficult to find (*Douglas v. City of Jeannette*, No. 450 October Term, 1942, 42 to 85, 106 to 114).

Regardless of what may be the practice of Jehovah's Witnesses in other parts of the country, and irrespective of what may be shown or admitted in records of other cases before this Court, the testimony in this case shows that their activities in Jeannette were purely commercial. They were going from door to door, selling and delivering their merchandise. They were bargaining by the methods that itinerant vendors ordinarily employ. In addition, they were extending their activities far beyond any point of reasonable solicitation. They were annoying the residents to the extent of being a nuisance. There were one hundred four so-called ministers in town (101a).

The following is a fair analysis of the testimony stenographically recorded at the trial:

Othmar Seiler testified with reference to the defendants, Ellaine Tzanes and Anastasia Tzanes, that he was at his home on February 25th, 1940, when the two defendants came to his house and after being admitted to the house asked him to purchase a book called "Creation", stating that the price was 25 cents. They also offered, for the sum of 25 cents, to sell him a Bible which they stated was worth in excess of Three Dollars. After further conversation, he purchased the book and paid the sum of 25 cents. (14a)

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With reference to Willard Mowders and Charles Seders, Regis Detruf said that in response to a call he "went out of the house and saw them on the porch of the adjoining house, and asked them what books they were selling and the price. One of the defendants advised him the price was 25 cents. He agreed to purchase the book 'Salvation', and paid the defendants the sum of 25 cents." (24a)

Concerning the defendants, Murdock and Lamborn, several witnesses testified that they "solicited them to purchase books, and after some conversation, the witness, Virginia Clair, was told the price was 25 cents. She paid the same and received the book 'Salvation'." (25a)

Anna Perisich and Anthony Maltezos, according to the witness, Francis Kramer, came to his house late in the afternoon of February 25th, "solicited him to buy books. He inquired the price, and was told they were 25 cents each. He purchased the book 'Salvation', and paid the sum of 25 cents. The defendants tried to persuade him to purchase a bible for the sum of 25 cents, claiming it was worth more than \$3.00." (25a)

None of the defendants had applied for or received the license required by Ordinance No. 60 of the City of Jeanette. The following are fair examples of the testimony with reference to what these defendants said or did as they went from door to door:

"A. Well, they said they were—they came to the door and my brother answered the door and said we weren't interested. They left and I went out on the porch and I hollered to that fellow right there (indicating Charles Seders), and I said, 'How much are your books?' and he said 25c. I said, 'May I see one?' He said, 'Yes, sir.' So he came over and showed me one and I looked at it and I said, 'I will take one!'"

(Testimony of Regis Detruf, 32a)

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Q. Did they say anything about the price of the pamphlet?

A. They did. They said usually what they got for them was 25c. They set their own price. It wasn't no donation or anything. That is what they said, the price of them were a quarter.

Q. Who was it that paid the quarter?

A. Virginia Clair paid the quarter."

(Testimony of Herbert Baughman, 41a)

A. Jim and Anna Perisich, she came in along too. So they put the record on and played it, the record run down, and I said, 'It's a damn good record.' That's the words I said. So they asked me if I was interested in buying any books. I said I might. So they handed me this book Salvation. I opened it up and started to look at it and I asked them how much they charged for these books. They says 25c. So I hesitated for moment, and I said, 'All right, I will take this,' and gave them a quarter.

Q. Who did you give the quarter to?

A. To Anna Perisich. I gave a quarter to Anna and she gave me the book, and she says, 'I am going to give you this book.'

Q. By the book you mean the pamphlet called Government and Peace?

A. Government and Peace, yes, sir. I said, 'O.K., thanks.' I said to them, 'Have you got any Bibles?' He says, 'Yes, the Bible will cost 25c more.' He said, 'You'll get a bargain on that.'

Q. Who said that?

A. This gentleman right here (indicating).

Q. That is Anthony Maltezos?

A. Yes. He says, 'You're getting a bargain on that; that book is worth three dollars or three and a quarter.' I said, 'No, this will be enough for me to

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"read." Well, they started to get their brief case and victrola put together and I said, "I'm sorry, you both are under arrest." They wanted to know what for. I told them for soliciting and selling books without a permit. I said, "I'm a policeman!"

(Testimony of Francis Kramer, 52a, 53a)

"A. No, my wife answered the door and they showed her a card and she called me and I went out and I just glanced through the card; I didn't read much about it, and I seen something about 25¢ for books at the bottom of the card. So I said to the ladies, 'Are you people selling books?' She said yes. I said, 'How much are they?' She said, 'They are a quarter.' She said, 'But for 50¢ we could sell you this book and sell you the both.' I said, 'How much do you want for this book I have in my hand?' She said, 'That book is a quarter and if you buy the both of them you can have them for 50¢.' So I just bought the one book for a quarter."

(Testimony of Othmar Seiler, 56a, 57a)

The defendant, Robert Lamborn, after testifying that he had no occupation other than that of Minister of the Gospel, and that he received no pay or remuneration of any kind (60a to 66a), and after doing a great deal of sparring around with evasive answers, finally testified under cross examination:

"Q. Did somebody make you a minister?"

A. No.

Q. What did you do to become a minister?

A. We go out from house to house exhibiting publications.

Q. Where do you get these publications?

A. I get those publications from the Watch Tower Bible and Tract Society, Brooklyn, New York.

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Q. How many publications did you have with you yesterday, the 25th?

A. I couldn't make an exact statement. I don't know.

Q. Did you have a suitcase full?

A. I had my little satchel full, yes.

Q. When had you gotten those?

A. Before I left home.

Q. That is before you left Cadiz, Ohio?

A. Yes.

Q. When did you leave Cadiz?

A. Saturday, about 11:00 o'clock in the morning.

Q. How did you go?

A. By automobile.

Q. Do you have your own automobile?

A. No; I have my dad's automobile.

Q. Have you paid for those publications?

A. Yes.

Q. How much did you pay for them?

A. I couldn't say the exact amount, because I didn't know how much publications, that I had.

Q. How much do you ordinarily pay for this book *Salvation!*?

A. It is offered to the public on a contribution of 25c.

Q. How much do you pay for it?

A. Twenty cents.

(66a, 67a)

Although the members of Jehovah's Witnesses insist upon calling the price for which they buy, and the price for which they sell their books a "Contribution", the transaction is so far commercial that they may obtain the books on credit.

"Q. Did you ever obtain any without making a contribution?"

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A. On credit I have, yes.

Q. You mean they trusted you for the contribution that you had to later make?

A. Yes.

(Testimony of Robert Murdock, Jr., 83a)

Willard Mowder, much younger than the other defendants, and much more direct in his answers, testified:

"Q. Mr. Mowder, where do you live?"

A. Virginville, West Virginia.

Q. What is your occupation, Mr. Mowder?

A. None at all.

Q. Why did you come to Jeannette yesterday?

A. My main reason was I wanted to get in some kind of work that I learned that Jehovah at sometime or another would make this world a different world, and I like this kind of work very much. That is my reason for coming."

(96a, 97a)

Earl V. Singer, along with Mr. Hessler, was in charge of the delegation that canvassed the City of Jeannette on the occasion which gave rise to these appeals. He owned a trucking business in East Liverpool, Ohio, but was merely keeping "a weather-eye on the business" while he devoted full time to take to the people of good will a message of HIS KINGDOM. With reference to the system of buying and selling books from the Watch Tower Society, he testified:

"Q. How much do you pay for these books?

A. You mean the bound books?

Q. Yes.

A. Our society has set up a system of allowing those people who devote all their time to the work of proclaiming the Kingdom Message, of giving these bound books to them on a contribution of 5c. We take

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them out and place them with the people—on the contribution set by the society. That enables those who are preaching the Gospel of God's Kingdom to buy a bite to eat once in awhile.

Q. Exactly. So that that book costs you how much?

A. That costs me—

Q. Five cents!

A. If I would get one from the society it would cost me 5c.

Q. And when you in turn turn those books over to other solicitors, do you charge as much as 25c for it?

A. I am not permitted to do that.

Q. Do you not have charge of what they call a company?

A. No, sir. The only way that is done—in other words, I cannot be a distributor other than going door to door with the publications, that is people who are not associated with the organization.

Q. And when you go from door to door the contribution that you expect is 25c?

A. The society sets that contribution, yes, sir.

Q. Sets that contribution?

A. That's right. It is a fund of our society set aside to aid those who give all their time to the Lord's work.

Q. And you have been giving all your time for the past year and a quarter anyway?

A. Yes, sir.

Q. And for that you get the special contribution rate of 5c and when you exact contributions of the persons who take the books from you, the rate is the standard rate of 25c, is that right?

A. I have an automobile, that takes gasoline; I

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I eat. That money I use to eat I get from my business, and not only that but I give many of the bound book publications to the Lord's poor who cannot afford to contribute and get the life-sustaining truths of Almighty God. But in the long run I give more than I receive.

(104a, 105a)

(Page references are to the record in the Superior Court of Pennsylvania, which, so far as counsel for the respondent knows, is the only record lodged with this Court.)

Thus it very definitely appears that the petitioners who were from a number of different localities, both inside and outside of Pennsylvania, were engaged in the City of Jeannette in transactions which must be branded as purely commercial. The record further shows that the religious end was purely incidental to the business object; that there is an ample spread of profit to permit the payment of the modest license fee imposed; that there is a definite need for a curb on the unbridled extremes to which the co-religionists of the petitioners intrude themselves into homes in the City of Jeannette for the purpose of selling their books; and that the ordinance is a police measure designed to protect citizens in their homes as well as an exercise of the sovereign power of the state to tax.

At 400% in the case of full time ministers—not shown as to companies.

ARGUMENT

The business of an itinerant vendor in Pennsylvania has been, from earliest times, regarded as a legitimate object of taxation and one fraught with peril to the residents, and thus subject to regulation. This is particularly so where the seller carries his merchandise from door to door, and the very manner of doing business necessitates his entrance into homes. The activity may be engaged in by the most high minded individuals and it may be engaged in by crooks.

The merchant may be perfectly honorable and upright, and interested only in giving fair value in return for the money he receives. In so doing, he is exercising a right guaranteed by the Constitution—that of earning a livelihood. He is, however, subject to the payment of a tax the same as the merchant who sets himself up in a permanent place of business.

The seller may be interested in advertising a particular commodity and getting it into the hands of people for use so that they may appreciate its particular qualities. He may be selling it below cost. He, too, is exercising a lawful calling, and one that is guaranteed by the Constitution.

A publisher may feel that his particular book or writing is a special message on politics or economics or social problems, and in selling it from door to door, he may be motivated solely by a desire to place this message in the hands of people who may benefit by it. Profit may never enter his mind; yet he renders himself liable to the payment of tax notwithstanding the fact that he, like others, is exercising a constitutional right.

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The Tenth Amendment reserves to the States the powers not delegated to the United States by the Constitution and not prohibited to them by that document. The sovereign powers of the States remain unaltered and unimpaired except so far as they were granted to the United States. *Buffington v. Day* (Mass. 1871), 11 Wall. 124, 20 L. Ed. 122.

There is no suggestion in the Constitution or elsewhere that either the States or the Federal Government are forbidden to tax individual rights which are above and beyond the power of either State or the Federal Government.

If this were the case, there would be few, if any, activities from which our government could derive their means of existence. An American citizen can point to almost any activity in which he may engage and say with just pride "I am exercising a right with which my government has no right to interfere." He may be referring to his right to own property, to his right to exercise a particular trade, calling or profession, to his right to move about from place to place, yet no one has ever suggested that this person's rights are to be exercised free of tax.

"The taxing power of a state is one of its attributes of sovereignty; it exists independently of the Constitution of the United States and undervived from that instrument, and may be exercised to an unlimited extent upon all property, trades, business and avocations existing or carried on within the territorial boundaries of the state except so far as it has been surrendered to the federal government, either expressly or by necessary implication."

Union-Pacific Railroad Company v. Penniston (Nebraska 1873), 18 Wall. 29, 21 L. Ed. 787.

"Whatever exists within its territorial limits in the form of property, real or personal, with the exceptions stated, is subject to its laws; and also the numberless enterprises in which its citizens may be engaged. These are subject to state regulations and state taxation, and there is no federal power under the Constitution which can impair the exercise of this state sovereignty."

Nathan v. Louisiana (1850), 8 Howard 82, 12 L. Ed. 999.

"With the exception of the powers surrendered by the Constitution of the United States, the people of the several states are absolutely and unconditionally sovereign within their respective territories. It follows that they may impose what taxes they think proper upon persons or things within their domain, and may apportion them according to their discretion and judgment. * * * There is nothing in the Constitution of the United States to forbid it, nor any authority given to this court to question the right of a state to bind itself by such contracts, whenever it may think proper to make them."

Ohio L. Ins. Co. v. Deholt (Ohio 1853), 16 Howard 428, 14 L. Ed. 997.

Pennsylvania has for upwards of one hundred years taxed "all offices, posts of profit, professions, trades and occupations," (Act of April 29, 1844, P. L. 486, Section 2; 1927, April 28; P. L. 491, Section 1, 72 PS 478), as well as real and personal property.

The Third Class City Act of June 23, 1931, P. L. 932, Art. XXVI, Section 2601, its supplements and amendments, 53 PS, Section 12198-2601, permits the imposition of a tax on persons who canvas and solicit and sell from

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door to door within the municipality, and ordinance No. 60 imposes the tax.

How can this Court draw a distinction between the tax on the occupation of a laborer, carpenter, doctor, lawyer and housewife and that of itinerant vendor? It may seem a little bit harsh, but the laws of Pennsylvania require the assessors to include "all single freemen above the age of twenty-one years who shall not follow any occupation or calling." Act of April 15, 1834, P. L. 509, Section 4, 72 PS 5071.

Not even the profession of clergyman is exempt from taxation.

"So far, from seeing any constitutional objection to the imposition of taxes upon clergymen, as well as upon other professions, it has been seriously questioned whether they can constitutionally be exempted from their share of the public taxes. The constitution declares that 'no man can of right be compelled to support any place of worship, or to maintain any ministry against his consent.' A numerous class of our citizens still hold to the faith of the founders of this Commonwealth, and bear their testimony against what they call a 'hireling ministry.' Many others read their Bibles in their own way, disclaiming all connection with religious congregations. If these classes of citizens should be compelled to pay more than their just proportion of taxes, in order that ministers of the gospel might be exempt, it is substantially the same thing as collecting the excess of taxes and paying it to the ministers to aid in maintaining them. Such a partial rule of taxation compels the Protestant to aid in maintaining the ministry of the Roman Catholic, constrains both to the aid in supporting the Jewish priesthood; forces each to support a form of religion

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which his conscience rejects, and compels the opponents of all to aid in supporting all. These suggestions may serve to show that the claim to constitutional exemption is not only rejected, but met by a counter claim, which may deserve consideration when the question arises. At present it is sufficient to say that the Act of Assembly does not exempt the 'profession' of a clergyman from taxation."

Miller v. Kirkpatrick, 29 Pa. 226, 231 (1857).

The tax in suit is not strictly an occupational tax. It is a tax on a particular method of doing business. The Pennsylvania cases so holding will be later discussed in this brief. The foregoing illustrations are given for the purpose of showing that much more direct taxes on religion than those imposed by Ordinance No. 60 have been the established practice in Pennsylvania for a long period of time. First, Second and Third Class cities in Pennsylvania, and most of the school districts have substituted per capita taxes for occupational taxes. So far as counsel has been able to discover, no minister has ever sought relief from the payment of this tax because it is a tax on religion, and no publisher has ever sought relief on the ground that it is a tax on free speech or free press. Many of the churches throughout Pennsylvania own income producing property. The income may be devoted entirely to the support of the church, and yet the real estate so owned must contribute its share to the tax burden. (By Act of Assembly, church property actually devoted to worship is exempt).

The respondents do not contend that the ordinance is solely a revenue producing measure. It is regulatory as well; and is a constitutional exercise of sovereign power from either point of view. Under the decisions of Penn-

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sylvania, similar ordinances have been upheld for many years.

The activity engaged in by the defendants in this case differs in no respect whatever from that which has for many years been the subject of regulation and license in Pennsylvania.

"The effect of the ordinance would seem to be to subject persons who would otherwise pay no license for the privilege of doing business within the borough, to the duty of paying something for the privilege, when they undertake to exercise it without incurring the expense of a mercantile license. *** The peddling of 'other articles' besides market produce, includes everything which may be disposed of by the method called 'hawking and peddling,' and we cannot say that this does not include canvassing from house to house and 'soliciting orders for books.'

Warren Borough v. Geer, 117 Pa. 207, 211, 212 (1887).

"But it is the manner of sale that makes a peddler. *** The business of the itinerant vendor is the same in either case, and so is the inconvenience and annoyance he inflicts on others. The merchant or store-keeper is a resident, has a fixed place of business, where his goods are shown to those who come in search of what they need, where he can be reached by process, and compelled to make good his guaranty of the quality of his wares. The peddler is a transient, with no fixed place of business, who seeks customers by invading their homes, and makes sales by persuading people to buy what they do not need, and who, by the time he is wanted to answer for his representations and engagements, is out of sight and out of reach of process. It is this matter of tracking a laboring man

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or woman into the home; and laying siege to him or her by an unscrupulous and self possessed stranger, who is after money and has no delicate scruples about the manner in which she gets it, that has made the peddler a dread in the country and in the villages, and has led the law makers in this and other states to put the business under strict regulations when it is not wholly forbidden. * * * The next point taken by the defendants is that, under the constitution of the state, an owner of goods has an indefeasible right to carry them when and where he pleases in search of buyers. * * * Our laws relating to peddling are directed, not against the right of acquisition, but the manner in which some people exercise that right; not to the right of an owner to sell his goods, but to the manner in which he may sell them. Our peddling laws are therefore not in violation of the constitutional rights of the owners of goods, but are a wise exercise of the police power over the manner in which goods, wares, and merchandise shall be sold."

Commonwealth v. Gardner; 133 Pa. 284, 289, 290 (1896).

There is involved in this case, not only the constitutional rights of the petitioners, but the constitutional right of the citizens of Jeannette to be protected in their homes. The business of soliciting from door to door affords a splendid opportunity for people of evil disposition to perpetrate frauds, to ascertain the means of access to a house, to determine the number and value of articles which may be the subject of theft, to know the number of occupants, and the likelihood of their being present at a particular time, and to dispose of worthless articles, at a price much beyond their actual value.

It is true the ordinance in suit does not attempt to

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regulate the hours at which solicitation from house to house is permitted. The class of people whom the ordinance is aimed would not be interfered with by regulation of hours. They could lay their plans, get the information desired, make the acquaintances they wished to make at any hour which would be fixed.

The place and manner is controlled in that the ordinance applies only to people who go from door to door and into homes for the purpose of making sales. Such persons are required to register their names and addresses, pay the small daily or weekly fee and carry with them a permit. Experience has shown that as a rule people with improper motives or with jail records will not register with the city authorities, and will not obtain a permit. If such persons do register, a record of name and address is available for the use of the police if harm comes or if fraud is perpetrated.

The City of Jeannette is a comparatively young municipality. It was founded in 1890. It grew rather rapidly, and now has a population of approximately seventeen thousand. As early as 1898, the need for such a protective measure for the inhabitants developed. The ordinance has been in force and has been effective for the purposes it is intended to accomplish for some forty-five years. In other communities in Pennsylvania, similar ordinances have been in effect for a much greater period of time.

These defendants and other members of Jehovah's Witnesses are at perfect liberty to sell their books, tracts and magazines on the streets of the City of Jeannette at any hour of the day or night without payment of any tax and without a license of any kind. They avail themselves of this privilege regularly.

The petitioners may employ the street corners to preach the gospel as they see it either by the printed or

spoken word. They have on occasions in the past rented public meeting places and advertised and held meetings, and they are privileged to do it in the future. The City of Jeannette maintains a public auditorium. This, too, is available to Jehovah's Witnesses absolutely free of charge, with light, heat and janitor service thrown in, at no cost, if they have as many as one convert who is a resident of the City of Jeannette and willing to make the request.

The mere solicitation of funds by going from door to door and handing in a card has never been interfered with in the City of Jeannette.

It is only where Jehovah's Witnesses go from door to door, and into homes, and actually sell their books and tracts that they bring themselves within the provisions of this ordinance. The record in this case discloses beyond any question that the methods employed were those of bargain and sale, that the practices of the petitioners with their so-called companies and with the Watch Tower Bible and Tract Society were those employed in ordinary commercial transactions. Typical examples of expressions used are:

"Yes, the bible will cost 25 cents more. He said, 'You will get a bargain on that.' " (52a)

"Yes, he says 'You are getting a bargain on that. That book is worth \$3.00 or \$3.25.' " (53a)

"I said, 'How much are your books?' and he said '25 cents.' I said 'May I see one?' He said 'Yes', so he came over and showed me one and I looked at it, and I said 'I will take one.' " (32a)

"So I said to the ladies—your people selling books? She said 'Yes.' I said 'How much are they?' She said 'They are a quarter.' She said 'But for' 30

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cents we could sell you this book and sell you the both." (96a).

The price at which the petitioners obtained the books varied. Earl V. Singer, who called himself a "full time minister," and who said he was an assistant ~~to~~ manager for the Watch Tower Bible & Tract Society, purchased books at five cents a piece and sold them for a quarter (105a). His explanation was quite frank:

"I have an automobile, that takes gasoline; I eat. That money I use to eat I get from my business, and not only that but I give many of the bound book publications to the Lord's poor who cannot afford to contribute and get the life-sustaining truths of Almighty God. But in the long run I give more than I receive." (105a)

The margin of four hundred per cent profit is not bad remuneration for any book salesman.

If the testimony of the other petitioners is to be accepted, they purchased the books at twenty cents and sold them at a quarter. There is serious question whether the petitioners' testimony can be accepted.

Robert Lamboin, for example, testified that he lived at Cadiz, Ohio; that he was a minister; that he had no other occupation, and that he received no pay for his work (60a, 64a, 65a). The work was done, he said, "Free of charge, on my own expense." (65a). On cross examination, he was evasive. He did not know how many books he had or how much he paid for them (66a, 67a). He finally said he paid twenty cents each at the Cadiz, Ohio Company of Jehovah's Witnesses (67a). He had, he testified, previously bought such books on credit. It ultimately developed that the Cadiz, Ohio Company of Jehovah's Witnesses was his own home (69a). The numerous companies and

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organizations, all instrumentalities of the Watch Tower Bible & Tract Society, make it impossible to trace the funds of the individuals who purport to be ministers. If full time ministers pay five cents for the books, the so-called companies certainly pay no more.

The mere fact that the petitioners and their co-religionists profess to be ministers furnishes no protection to the bongs they invade. A glance at the record in this case shows that any one can become a minister if he has either the price or the credit to obtain a few books. Willard Mowder had no occupation at all. His home was in Virginville, West Virginia. He did not profess to be a minister. He testified—

"My main reason was that I wanted to get in some kind of work that I learned that Jehovah at sometime or another would make this world a different world, and I like this kind of work very much. That is my reason for coming." (97a)

The only requisite for becoming a minister is the so-called exhibition or sale of publications from house to house (66a).

The identification cards are also obtained with the purchase of books (93a). J. O. Rutherford, the President of the Watch Tower Bible & Tract Society, whose name appears on the card, has no responsibility to the people of Jeannette. Neither does he have any responsibility for the people who carry the card. If individuals, in the name of the exercise of religious freedom, can set themselves up in the place and stand of responsible elected officials, then a serious blow has been dealt both State and Federal Governments.

In their brief, the petitioners take the position that the payment of the fee established by the ordinance would forbid or operate as a substantial clog on their activities.

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The reasonableness of the fee was not questioned in the Mayor's Court or any of the Courts of Pennsylvania. It is raised here the first time. The record repels any notion that the fee of \$1.50 per day, or \$7.00 a week, prescribed by the ordinance, would be in any manner burdensome. If the Watch Tower Bible & Tract Society can publish its books and sell them to ministers or to its companies at five cents apiece, and the public, in turn, pays a quarter, then certainly the companies and the ministers can make allowance for the payment of the city's fee just as they make allowance for the purchase and use of automobiles, busses, and other instrumentalities used in their work.

The necessity of paying the fee might and undoubtedly would operate to compel Jehovah's Witnesses to reduce their force to the number reasonably necessary to canvass a community. On the day the petitioners were arrested, there were one hundred four solicitors in the City of Jeannette (191a). On a prior occasion, about the year earlier, there were well over a hundred solicitors. This was done in fulfillment of the defiant threat made by Mr. Hessler, zone manager for Jehovah's Witnesses, to come back and "be back with more than the Jeannette police can handle." (See record of case of *Douglas et al. v. City of Jeannette*, at No. 450 October Term 1912, pages 129 to 132).

This constituted pure defiance on the part of Jehovah's Witnesses. It followed an insistence by the Mayor that the rights of Jehovah's Witnesses be determined by the Courts. It was done out of a malicious desire to annoy the citizens and to embarrass the local authorities, and to force a withdrawal of the proceedings then pending before the Courts. The constitutional right of religious freedom certainly does not go this far.

Individuals selling small articles ordinarily canvass

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the entire town within a period of one to two weeks. Groups of six to eight do the job in a day. Jehovah's Witnesses, if they were actually desirous of carrying God's word, as they see it, into the homes of the city through the sale of their books, could register with the city clerk, pay the small daily or weekly fee, and be well remunerated from a monetary point of view.

The respondents see no occasion in this case for defining either religion or religious activity, but do wish to observe that if the definition contended for by the petitioners were accepted, it would permit them to do anything they pleased in the name of religion, and they, and they alone, would be the judges of what laws they would obey and what laws they would disregard. (The defense in the Mayor's Court was, in substance, that Jehovah law and commandments were supreme and that their consciences forbade them to apply for a license. 17a, 75a, 88a).

None of the rights guaranteed by the Constitution are absolute. That freedom of speech and freedom of religion have their limitations along with other rights was recognized by this Court in *Shapinsky v. City of New Hampshire* (New Hampshire 1942), 62 S. Ct. 766, 315 U.S. 568, 86 L. Ed. 1031; *Hotel and Restaurant Employes International Alliance, Local No. 122 v. Wisconsin Employment Relations Board* (1942), 62 S. Ct. 706, 316 U. S. 437, 86 L. Ed. 946.

Even the right to use the streets and public parks for communication of views on national questions was held to be relative in the case of *Hague v. Committee for Industrial Organization* (N. J. 1929), 59 Super. Ct. 954, 37 U. S. 496, 83 L. Ed. 1423. It was there said that these rights must be exercised in subordination to the general comfort and convenience and in consonance with peace and good order.

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In the case of *Schneider v. Town of Irvington*, 60 S. Ct. 146, 308 U. S. 147, 84 L. Ed. 455 this Court used the following highly significant language:

"In every case, therefore, where legislative abridgment of the right is asserted, the courts would be astute to examine the effect of the challenged legislation. Mere legislative preferences or beliefs respecting matters of public convenience may well support regulation directed at other personal activities, but be insufficient to justify such as diminishes the exercise of rights so vital to the maintenance of democratic institutions. And so, as cases arise, the delicate and difficult task falls upon the courts to weigh the circumstances and to appraise the substantiality of the reasons advanced in support of the regulation of the free enjoyment of the rights."

The constitutional right of the citizens of Jeannette to be protected in their homes, their right of privacy, and their right to enjoy their homes, demands that Ordinance No. 60 of the City of Jeannette be upheld as a constitutional exercise of the sovereign right of the state to tax, and as an exercise of the sovereign duty of the state to protect its citizens from unrestrained intrusion into their homes.

President Judge Keller, of the Superior Court of Pennsylvania, who wrote the opinion of the Superior Court in this case, also wrote the opinion of that Court in the case of *Commonwealth v. Palms*, 158 A. (2d) 481, 141 Pa. Super. Ct. 430. It so aptly expresses the views of the respondents that counsel takes the liberty of using it in conclusion:

"To phrase it another way, while freedom of religious belief is a constitutional right, freedom in the mode of expressing that belief is not a constitutional right." (All Reporter, 484).

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"We have here involved not only more noisy and disturbing disorderly conduct than was present in those cases, but we have an additional element not present in them, viz., the violation by the appellant and his associates of a constitutional right much older than, and just as fundamental as, the right of freedom of conscience or the right of freedom of speech—the right to be secure in one's home from unwanted intrusion." Mr. Justice Murphy had it in mind when in his recent opinion in *Thornhill v. State of Alabama*, 310 U. S. 88, 60 S. Ct. 736, 84 L. —, and *Carlson v. People of California*, 310 U. S. 106, 66 S. Ct. 746, 84 L. Ed. —, decided April 22, 1940, he recognized the power and duty of the state to take steps to preserve the peace and *protect the privacy* and the property of its inhabitants. Centuries before freedom of conscience and freedom of speech were established in England it was the proud boast of an Englishman that his home was his castle and that as long as he obeyed the law, the King and his army could not enter it against his will. That right is implied in both our Federal and State Constitutions in the provisions against *unreasonable search and seizure* even by law officers. Const. U. S. Const. Amend. 4; PS Const. art. 1 Sec. 8. We had it in mind when we said in *Pittsburgh v. Rutherford*, 134 Pa. Super. 192, 199, 4 A. 2d 224, 227: "This appellant is perfectly free to worship God according to the dictates of his own conscience, separately or with his family and co-religionists, in his home or theirs, and in church, chapel, assembly or other gathering place. But the very clause of the Constitution which protects him in his religious worship, protects others, from having *his* religious tenets and beliefs thrust upon *them*, *against their will, in their homes and offices.*" Nor does the right of free speech justify the

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unwanted intrusion of the speaker into the homes of others to give voice to his speech. There is a reasonable limit to the right, and it ends at the door of a home whose residents do not want the speaker to enter; just as its protection is lost by blasphemy, disorderly conduct, libel, slander, etc."

Respectfully submitted,

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